SID PARTNERSHIP

IBLA 78-386
IBLA 78-428 Decided October 10, 1978

Appeals from decisions of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers M 40249 and M 40513.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: First Qualified Applicant

   A first drawn simultaneous oil and gas lease offer filed by an association which is not accompanied by evidence of the qualifications of the association to hold an oil and gas lease or which does not refer to the case record in which the evidence had previously been filed, as required by 43 CFR 3102.3-1(a), must be rejected.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings

   A first drawn simultaneous oil and gas lease offer filed by a partnership which is signed by one agent where the partnership agreement authorizes two or more agents, jointly, to file simultaneous oil and gas lease offers, is not signed by an "authorized" agent, as required by 43 CFR 3112.2-1(a), and must be rejected. A grant of authority to "A and B," without more, will be deemed to create a joint agency.

APPEARANCES: Robert D. Childers, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

SID (Shot in the Dark) Partnership has appealed from separate decisions of the Montana State Office, Bureau of Land Management (BLM), rejecting its simultaneous oil and gas lease offers, M 40249 and M 40513.

Appellant's lease offer, M 40249, was drawn first at the March 1978 drawing. On April 11, 1978, the BLM State Office rejected appellant's lease offer because it had failed to submit evidence of the qualifications of the partnership to hold an oil and gas lease or, alternatively, to refer to the case record in which the evidence had previously been filed.

Appellant's lease offer, M 40513, was drawn first at the April 1978 drawing. On May 8, 1978, the BLM State Office rejected appellant's lease offer because the partnership agreement required "Robert D. Childers and Mike E. Thomas" to sign any contractual agreement and only the former had signed the relevant drawing entry card (DEC).

As to the failure to submit evidence of partnership qualifications, appellant, in his statement of reasons for appeal, contends that at the time of its lease offer it was an association and as such it had "15 days [from the time it filed its lease offer] * * * to file its agreement and qualifications." It further asserts that within that 15-day period, it became a partnership and therefore filed the partnership agreement with the BLM State Office, "rather than the agreement of the association," thus complying with the law.

[1] Appellant has misread the law. The pertinent regulation, 43 CFR 3102.3-1(a), 1/ requires that, in the case of associations,

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1/ The regulation, 43 CFR 3102.3-1(a), provides that:

"(a) If the offeror is an association which meets the requirements of § 3102.1-1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (1) that it is authorized to hold oil and gas leases; (2) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (3) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished. Where such material has previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted." (Emphasis added.)

lease offers must be "accompanied by" evidence of the qualifications of the association to hold an oil and gas lease or, alternatively, reference must be made to the case record in which the evidence had previously been filed. See J-S Enterprises, Ltd., 2 IBLA 9 (1971) (distinguishing statements of interest). Regardless of whether appellant was an association or a partnership at the time of submitting its lease offer, the regulation clearly applies to "[a]ssociations including partnerships." 43 CFR 3102.3.

Appellant's failure to submit the necessary evidence with its lease offer or, alternatively, to refer to an appropriate case record necessitated rejection of its lease offer. Norcross Partners, 31 IBLA 181 (1977); Lyle Q. Johnson, 13 IBLA 233, 234-35 (1973); J-S Enterprises, Ltd., supra. Accordingly, the State Office properly rejected appellant's lease offer M 40249.

[2] As to the omission of Mike E. Thomas' signature from the drawing entry card, appellant contends that the signature of Robert D. Childers on the card was sufficient, since the "intent" of the partnership agreement was that "either" of the named individuals could sign in the partnership name. Appellant cites, in support of this contention, the opinion of the Field Solicitor, Billings, Montana, that a requirement that both individuals sign "was obviously not intended." (Memorandum to Chief, Minerals Adjudication Section, dated April 24, 1978.)

The pertinent regulation, 43 CFR 3112.2-1(a), requires that all drawing entry cards must be "signed * * * by the applicant or his duly authorized agent in his behalf." (Emphasis added.)

Generally, in the case of a partnership, each partner by definition has the authority to bind the partnership to any contractual arrangement. However, appellant's partnership agreement expressly altered this relationship.

Appellant's agreement provides in pertinent part that:

> This co-partnership will operate * * * with no partner having the authority to * * * bind the partnership or any of its partners in any contractual agreement with the following exceiptions [sic]: (1) Robert D. Childers and Mike E. Thomas will have the authority to determine which leases will be picked on each month's lotteries * * *; and (2) in the event a lease is drawn in the name of S.I.D., Robert D. Childers and Mike E. Thomas will have the authority to negotiate and contractually arrange lease and/or sub-lease in the partnership name * * *. [Emphasis added.]

The question for decision is whether Robert D. Childers alone was an "authorized" agent within the meaning of 43 CFR 3112.2-1(a) in terms of signing drawing entry cards for oil and gas leases.

"[A]n appointment of several agents shall be construed to be a joint appointment unless it clearly appears from the instrument that such appointment was to be joint and several." Callister v. Graham-Paige Corp., 146 F. Supp. 399, 403 (D. Del. 1956); 2A C.J.S. Agency § 244 (1972) (authority conferred upon two or more agents presumed to be joint). In the case of a joint and several agency, each agent may act separately whereas with a joint agency, the agents must act together. 2A C.J.S. Agency § 244 (1972).

We hold that the conferral of authority on "Robert D. Childers and Mike E. Thomas" created a joint agency. See Callister v. Graham-Paige Corp., supra. We are unable to say that the partnership agreement clearly indicates that a joint and several agency was created. Use of the word "and" is as consonant with the notion that both agents must act together as with the notion that they may act separately. We decline to conjecture as to appellant's true "intent." 2/

As such, Robert D. Childers alone was not authorized to sign any drawing entry cards. Thus, the relevant drawing entry card was not signed by an "authorized" agent within the meaning of 43 CFR 3112.2-1(a). This necessitated rejection of the lease offer. Anchors and Holes, Inc., 33 IBLA 339 (1978). Accordingly, the State Office properly rejected appellant's lease offer M 40513.

Appellant also asserts that SID should have received prior notification "of the interpretation of this unusual requirment [sic]." The regulation, however, plainly states that an agent, if the offeror chooses to act through him, must be "authorized." As appellant's partnership agreement stands, Robert D. Childers was simply not authorized to act alone. It was the drafting of the partnership agreement,

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2/ We do not agree with the statement of the Field Solicitor, Billings, Montana, that it is obvious that appellant intended that both Childers and Thomas were to be vested with authority, individually and separately, to bind the partnership. It is clearly possible that the ten members of the partnership did not wish to give either of the two individuals separate authority, but recognizing the difficulty of getting unanimous agreement from all ten in the short period necessary to submit a DEC, determined to delegate this authority to both Childers and Thomas acting together.

In any event, appellant, having created this ambiguity, must be forced to live with the consequences thereof. See generally John J. Sexton (On Reconsideration), 20 IBLA 187, 194 (1975).

and not a novel interpretation of applicable regulations, which gave rise to the problems herein. Appellant's complaint is inapposite.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Joseph W. Goss
Administrative Judge